Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No._____

IN THE
Supreme Court of the United States

Jose Melendrez, Jr.,
Petitioner,
Vs.
Honorable Samuel Fred Biery,
Honorable Aulia Moses Ludlum,
Honorable Orlando L. Garcia,
Honorable Edith H. Jones,
Honorable Carolyn Dineen King,

Respondents.

On Emergency Petition For Writ of Certiorari
To The United States Court of Appeals
For the Seventh Circuit with respect to
Interlocutory Decision and/or Order

PETITION FOR WRIT OF CERTIORARI

Mr. Jose Melendrez, Jr.
1416 Franklin St.
Little Chute, WI 54140
920-428-1823
IN PRO SE
Attorney of Record Attorney for Petitioner

QUESTIONS PRESENTED FOR REVIEW

1). **Whether the U.S. Court of Appeals** was in error to construe and affirm the lower Court's Decision to Transfer Venue to Texas for Lack of Jurisdiction.

2). **Whether the U.S. Court of Appeals** was in error NOT to Entertain Petitioner's Appeal pursuant to 28U.S.C. &1292(b)Interlocutory Decision and/or Order

3). **Whether the U.S. Court of Appeals** has Jurisdiction under 28 U.S.C. & 1292 (b) Interlocutory Decision and/or Order to HEAR and ENTERTAIN cases where the case OFFERS an IRREPARRABLE EFFECT on Petitioner's Constitutional Rights as a U.S. Citizen of this Country.

4). **Whether the U.S. Court of Appeals** Conspired with the U.S. Attorney's Office in Milwaukee, WI and the Respondents in this case to Conceal the Complexity of the Issues and Overwhelming Evidence of Judicial and Official Misconduct to Transfer Venue to TX and to especially Docket and file a Civil Case in the Western District of TX without the Permission or Authorization of Petitioner as the evidence shows.

5). **How did the U.S. Court of Appeals** of the Seventh Circuit "JUSTIFY" the Methods and Procedures Used by the Government and the lower Courts to Transfer Venue to Texas when the lower Courts & GOV. Committed Fraud, Obstruction of Justice & Perjury to Transfer Venue to TX when Filing False & Fraudulent Declarations as the Evidence shows.

CERTIFICATE OF INTERESTED PARTIES

The Undersigned Petitioner Jose Melendrez, Jr., certifies that the following persons have an interest in the outcome of this lawsuit. There representations are made in order that the Judges and Said Counsels of Said Court may evaluate possible disqualifications or recusals:

Mr. Jose Melendrez, Jr., Plaintiff resides at: 1416 Franklin St., Little Chute, WI 54140

Interested Parties: The Office of General Counsel Administrative Office of the U.S. Courts Washington, D.C. 20544, Phone: (202) 502-1100.

Hon. Aulia Moses Ludlum U.S. District Judge(Western District of Texas-Del Rio Division at 111 E. Broadway, Del Rio, Texas 78840

Hon. Samuel F. Biery U.S. District Judge(Western District of Texas-San Antonio Division) at 655 E. Durango Blvd., San Antonio, Texas 78206

Hon. Orlando L. Garcia U.S. District Judge(Western District of Texas-San Antonio Division) at 655 E. Durango Blvd., San Antonio, Texas 78206

Hon. Edith H. Jones Chief Judge U.S. Court of Appeals(5th Circuit) at 515 Rusk Avenue, Room 12505, Houston, Texas 77002-2655

Hon. Carolyn Dineen King U.S. Circuit Judge(5th Circuit) at 515 Rusk Avenue, Room 11020, Houston, Texas 77002-2694

Dated: August 16, 2010

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Appendix B Order of the U.S. District Judge Rudolph T. Randa "Decision and Order" filed on the 4th Day of June, 2010. In regards, to Defendants Motion to Transfer Venue to TX., and Denying Petitioner the Right to Speak to Chief Judge Clevert of Milwaukee and Chief Judge of the Seventh Circuit Easterbrook.

Appendix C Order of the U.S. Court of Appeals for the Seventh Circuit filed on the 6th day of August, 2010. In regards, to Interlocutory Order. Dismissed for lack of jurisdiction.

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Federal Rules of the Supreme Court of the United States

Rule 29 ..... **1**

NO._____

IN THE
SUPREME COURT OF THE UNITED STATES

_____

JOSE MELENDREZ, JR,

Petitioner,

vs.

UNITED STATES OF AMERICA, et al.,

Respondents,

_____

AFFIDAVIT OF MAILING

_____

STATE OF WISCONSIN)
) SS SUPREME
) COURT
) RULE 29
COUNTY OF WINNEBAGO)

I, Jose Melendrez, Jr., having been duly sworn according to law, depose and says:

That he is the Petitioner in the above-captioned case and the deponent herein.

That the deponent on the 16th day of August 2010 mailed his

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The Opinion of the U. S. Court of Appeals for the Seventh Circuit (App. C, Infra)not reported. The Opinion of the U. S. District Court (App. A & B, infra) not reported.

JURISDICTION

The U.S. Court of Appeals for the Seventh Circuit entered its Judgment on August 6, 2010 (App. C, infra). The Petitioner did not apply for rehearing en banc. The Petition Writ of Certiorari is filed on August 16, 2010. The Court has jurisdiction under 28 U.S.C. Section 1254(1). Petitioner submits the Petition for the Writ of Certiorari has been properly commenced within the Statutory time period as set forth by Rule 13(1) of the Federal Rules of the Supreme Court of the U.S.

STATUTORY PROVISION INVOLVED

28 U.S.C. Section 2401(b) and 28 U.S.C. 2680 (h) & 28 U.S.C. 1346(b) established by an Act of Congress provides that the (FTCA)is the exclusive remedy for such claims against federal employees whom are in violation of the Constitution or laws of U.S.

CONSTITUTIONAL PROVISIONS INVOLVED

The 5th and 14th Amendment of the U.S. Constitution provides the Petitioner with Due Process Right Freedom of Choice and Liberty, including protection of his Due Process Rights in any Civil or Criminal Proceeding.

STATEMENT OF THE CASE

1).With respect to this "Original Civil Lawsuit", filed in March 30, of 2010. The Plaintiff, Jose Melendrez, Jr.(a confidential informant), filed a complaint to the U.S. Attorney's Office in San Antonio, TX on June 5, 1997 with the help of Attorney Jesse Gamez (Exhibit #14), complaining about the bad treatment by the mentioned law enforcement officials. The Plaintiff has exculpatory evidence (45 Exh.- see attached) that have been deliberately and intentionally concealed by the U.S. District Courts in Del Rio, & San Antonio, TX and now the 5th Circuit in New Orleans, LA.

2). In Addition, the Plaintiff continued to file (Pro se) complaints from 06/05/1997 thru Jan. 18, 2000 & 6/12/ 08 & 08/26/09 (See exh. 12,13,16,17,18, 19, 20, &38-45). To wit , no investigations/actions were taken against the law enforcement officials mentioned herein.(45 exh. that reveal official misconduct but have been concealed deliberately)

3). When no actions/investigations were initiated by those officials who are supposed to answer to Plaintiff's complaint, Plaintiff filed an administrative lawsuit pursuant to 28 U.S.C. 2401(b) & 28 U.S.C.2680(h)based on abuse of process & negligent misrepresentation on 06/20/2000 against the DEA Agents, County Officials and State Trooper.

4). On July 18/2000, notice was given to Plaintiff by Aleta Bodolay, Paralegal Specialist, Torts Branch, Civil Division, Washington, D.C. that his adm. lawsuit was received & commenced 6/27/00

5). On August 11, 2000, Bettie E. Goldman, Associate Chief Counsel, Washington, D.C. made a response on behalf of law enforcement officials.

6). On August 17, 2000, Plaintiff made a reply to Law Enforcement's response to his Adm. lawsuit.

7). On November 2, 2000 Plaintiff sent a notice to Ms.Bettie E. Goldman, The Attorney for the law enforcement officials that if a final decision is not

made with-in the six-month time frame the Plaintiff would file in U.S. District Court the lawsuit against the mentioned individuals no later than 01/02/01.

8).No final decision has been made within the six-month time limitation allowed by 28 U.S.C. 2401, on this date the civil suit is filed in Federal Court against the mentioned law Enf. Officials 01/02/01.

9). On 08/27/01 Plaintiff filed an instant appeal against the aforementioned law enforcement officials after the U.S. District Court for the Western District of TX dismissed the Plaintiff's Lawsuit. (No Court hearings were ordered and the evidence was never considered and mysteriously disappeared from the U.S. District Clerks Office in Del Rio, TX) The U.S. Attorney's Office did receive copy of this evidence by the civil rules of civil procedure. (Exhibit #27 and exhibit #35).

10).On May 7, 2002, Plaintiff filed an instant appeal against the aforementioned law enforcement officials after the U.S. Court of Appeals dismissed the

Plaintiff's suit. Appealed in U.S. Supreme Court.

11). On Aug.02, Plaintiff's suit was dismissed by U.S. Supreme Court (evidence not considered).

12). From Aug. 2002 thru March 2005, the Plaintiff while on probation in the Eastern District of Wisconsin , Milwaukee, WI and no money, worked feverishly to hire an attorney to help the Plaintiff with the aforementioned case and investigation.

13). On April 2005, Plaintiff hired Attorney at Law Steven P. Price to help Plaintiff file for relief in the U.S. District Court in Western District of TX.

14).After a year of research and investigation, Attorney Steven P. Price filed for relief on behalf of the Plaintiff on Friday June 23, 2006. (Writ of Habeas Corpus 28 U.S.C. 2254 and alternatively 28 U.S.C.A. 1651 Writ Coram Nobis). In San Antonio, Texas(Western District of Texas).

15). On July 12, 2006, Judge Primomo's issued a report and recommendation to dismiss the Petition filed by Plaintiff and Attorney Steven P. Price.

However, no

notice was given to Attorney Price that a order had been issued by Judge Primo. No time given to Mr. Price to object to the recommendation by Judge Primomo. (Ten days)

16). On 08/04/06, Judge Fred Biery the Original Sentencing Judge reassigned the case to Del Rio, TX. (Case #DR-06-CA-58-No Notice or objection time was given to Attorney Price that the case was getting reassigned to Del Rio, TX where Plaintiff & Mr. Price did not want the case to be because of the former prosecutor Alia Ludlum was the U.S. Judge & would create a conflict of interest.

17).On August 8, 2006, Judge Alia Moses Ludlum, the former prosecutor that prosecuted Plaintiff's Criminal case dismissed the petition filed by the Plaintiff.(Civil Case #DR-06-CA-58)(again no notice or objection time was given)(ten 10 days).

18). On 08/1706, Plaintiff and Attorney Steven P. Price discussed the Dismissal and why they had not received the Report and recommendation from

Judge Primomo. But, most importantly, had not given notice to object to the recommendation. And to object to Judges Recusal-Alia Moses Ludlum. In addition, no hearings were ordered & no responses were issued from the U.S. Attorney's Office to Plaintiff's Petitions filed on June 23, 2006.

19). On 08/17/06, Plaintiff & Attorney Price filed a notice of appeal and payed the 255.00 filing fee.

20). On 08/23/06, Plaintiff received a phone call from Attorney Price explaining Alia Moses Ludlum had vacated the order and recused & disqualified herself from hearing the Plaintiff's case. Attorney Price expressed relief & explained we would now have time to object to the Recommendations of Judge Primomo and the Recusal issue against Alia Moses Ludlum in Judge Fred Biery's Court Room..

21). On August 25, 2006, Plaintiff's Attorney Steven P.Price called Plaintiff to explain that Judge Fred Biery had dismissed the Plaintiff's Petition not even 48 hours after Judge Alia Moses Ludlum had recused

herself from case. Consequently, not giving the Plaintiff, Attorney to Object, response or sigh-relief

22). On 05/06/08 after Plaintiff had appealed the Dismissal In U.S. Court of Appeals, the Plaintiff was DENIED a Certificate of Appealability, in part to Re-Characterization of Petition under 2254 & Writ of Error Coram Nobis, to a Judges Motion 2255(See attached Orders).

23). On 06/12/08, the Plaintiff filed a Writ of Error Coram Nobis Petition, and in Support the Plaintiff filed a Motion to File 38-exhibits as evidence, Motion for Change of Venue, Motion for Recusal of Judge Biery, Motion- recusal- Judge Ludlum. & Plaintiff was Granted 2 Motions (Judges Recusal Biery & Ludlum) the rest denied by Judge Garcia.

24).On November 13, 2008, the Plaintiff was notified that Plaintiff's Petition for the Writ of Error Coram Nobis was DENIED and all other motions were dismissed.(see the attached exhibit), the Judges Rulings in Del Rio, and San Antonio, Texas, Fred

Biery and Ludlum are Contradicting with respect to Judge Garcia's Ruling. In addition, if Judges would have looked at the exhibits filed in Support, the Judge would have judged differently. The Plaintiff filed for motion to reconsider and was also denied on 02/03/09. As the record shows.

25).On 04/24/09, the Plaintiff filed Complaint of Misconduct against U.S. Judge Biery, U.S. Judge Ludlum and U.S. Judge Garcia in U.S. Court of Appeals in 5th Circuit. (See attached exhibit 40)

26). On 07/16/09, the Plaintiff received notice the Complaint of Misconduct had been dismissed by Chief Judge Edith H. Jones.(See att. exhibit 41).

27).On 07/31/09, Plaintiff filed a Petition for Review of the Chief Judge Edith H. Jones Dismissal of Complaint-Misconduct(See Exh. 41)

28).On 08/17/09, the Plaintiff received notice the Complaint-Misconduct was Denied by Judicial Council of Fifth Circuit & stated law provides for no review-unfavorable decision signed by U.S. Circuit Judge

Carolyn Dineen King Judicial Council-Fifth Circuit 29).On 08/20/09, the Plaintiff discovered that U.S. Judge Biery, U.S. Chief Judge Edith H. Jones and U.S. Circuit Judge Carolyn Dineen King are "ALL" Members of the Judicial Council- Fifth Circuit-& therefore should recuse themselves (See exh. 45).

30). On 08/21/09, the Plaintiff filed a Petition for Review pursuant to Rule 22 for Judicial-Conduct proceedings in the Office of General Counsel, Washington , DC.(See attached exhibit 44).

31). On 02/02/10, the Plaintiff filed an "Original Letter of Notice" to pursue legal action against the mentioned Defendants in this instant case in the Office of General Counsel. (See exhibit 45).

32). On 02/27/10, the Plaintiff filed an "Original Administrative Complaint" and "Letter of 30 Day-Resolution" and started legal process(See exh. 44).

33). On 03/30/10, the Plaintiff files this instant lawsuit against the mentioned Defendants in the U.S. District Court for the Eastern District of

WI Milwaukee Division when no investigations initiated by officials to answer to my complaint.

34). With Respect to the U.S. District Courts in San Antonio, TX, Del Rio, TX, and New Orleans, LA (5th Circuit), Milwaukee, WI, & the Seventh Circuit in Chicago, IL the recent actions undertaken by these officials, Judges & mentioned Defendants clearly have under minded the judicial system. & have abused their discretion for their own political interests & this is why the Plaintiff filed for Change of Venue because there can be no Justice if the same officials that put the Petitioner in prison unconstitutionally run the same U.S. District Courts in San Antonio, Texas, Del Rio, Texas and New Orleans, LA (5th Circuit)(See Exh.45 & Orders).

35). It is through these fifteen years and the above mentioned incidents that the Plaintiff has sought redress and continues to seek relief in the U.S. District Courts. And on Aug. 16 ,2010. Petitioner files this Petition for Writ of Certiorari.

STATEMENT OF THE FACTS

(A). As stated above, on Dec. of 1995, Jose Melendrez Jr.,(Complainant) was previously convicted in December of 1995 of charge of cons piracy possession with intent to distribute a quantity of Marijuana, and was sentenced to 84 months in prison in the Western District of Texas in San Antonio, Texas.

(B). On December of 1995, Complainant was sentenced to 84 months in prison for the above-mentioned charge, upon the advice of counsel and the representations of the prosecution in Court.

1). Prior to Complainant's sentence, On December 1992, the Complainant was released on parole (six months left in a non-related case) from the Missouri Correctional facility (Boonville) to the custody of the State of Texas Law Enforcement to answer to a detainer (theft case). The Complainant was released from Bexar County Jail with the Help of his Attorney Mr. Carlos Martinez on two-thousand dollar bail bond. The Complainant returned to his home town in Crystal city, Texas to await trial.

2). The Complainant reported regularly to his Parole Officer in Del Rio, Texas, or Crystal City on certain occasions. The Complainant violated his parole on several occasions by getting dirty urinalysis(cocaine). The Parole Officer, (to the knowledge of the Complainant), never violated the Complainant by reporting to the State of Missouri, or the Texas authorities where the

Complainant was out on parole and bond, respectively..

3). Sometime in March or April of 1993, the Complainant(Jose Melendrez Jr.) And Pedro Gutierrez were arrested by U.S. Border Patrols, and then referred to County Investigators in Zapata County,Texas, for investigation. Tony Quintanilla headed said Investigation Because Investigator Quintanilla knew that Complainant was on parole from missouri, and out on bond from the State of Texas, Complainant and Gutierrez were given an option to cooperate or go to prison. For this Reason, Complainant and Gutierrez agreed to co-operate and were released the next morning to begin working for Investigator Quintanilla. At this time, Complainant signed a contract with Investigator Quintanilla in this regard.

4). Complainant, having a contract with County Investigator, Tony Quintanilla to work for him(Quintanilla) as his informant, Furthermore, Complainant joined and agreed to work with; sometime in March or April of 1993; the Guadalupe Garza's Drug Conspiracy as an informant and undercover agent of the State of Texas and thereafter the United States Government.

5), From March thru November of 1993, Complainant, by and through his contract of immunity and as an agent of the state/government, repeatedly retrieved information on drug dealers.

6).Complainant first met Guadalupe Garza sometime in March or April of 1993 in Pearsall, Texas. They developed a working understanding to possess and distribute drugs. At all times, this working relationship between Complainant and Garza was not only under the guidance and direction but also direct orders and authorization of Investigator Quintanilla.

7). Complainant, was in fact, participating in undercover operations in the South Western District of Texas when 176 kilos of Marijuana and two automobiles were seized by U.S. Border Patrols and DEA Agents from Eagle Pass, Texas. The Complainant, who discovered and reported the load was referred and handed over to Arnoldo Ramos Sgt/Inv. Department of Public Safety in Del Rio, Texas, by Tony Quintanilla. It is imperative to note that Complainant originally reported the marijuana load, which facilitated this drug bust. The operation was a success and the Plaintiff received a thank you and to continue to look for drug dealers.

8). Subsequently, Complainant was subpoenaed, to testify before a Federal Grand Jury in Del Rio, Texas, about the aforementioned load that he had reported to Sgt/Inv. Ramos of the Texas Department of Public Safety and Tony Quintanilla Prior to his grand jury testimony, Complainant was coached, regarding his testimony, by Sgt./Inv. Arnoldo Ramos and the Assigned U.S. District

Attorney on the case, Complainant was instructed to deliberately mislead the grand jury by saying that he(Complainant) did not know about Guadalupe Garza's involvement with drug trafficking, and that the Complainant had just borrowed the truck to ostensibly take it to Guadalupe Garza to fix the truck used in the transfer.

9). As planned by the authorities, this subterfuge worked bucause the Federal Grand Jury never learned that Complainant was the informant in the case. This left Complainant in a good position to keep on working for the County, State and U.S. Government as an informant..

10).On November of 1993, the Complainant with orders and authorization of the County Investigator (Tony Quintanilla) continued to retrieve information on drug dealers in and out of the United States (Republic of Mexico). All this happened before Complainant was even arrested on this case conspiracy to distribute marijuana with Guadalupe Garza..

11). On November of 1993, the Complainant (not being in the possession of the marijuana)was arrested by the Drug Enforcement Administration in Eagle Pass, Texas. (Special Agent Tapia, Larry Leon, and Francis E. Seib) for scouting the road for Guadalupe Garza. Of course, Complaiant explained he was working for the County Investigator (Tony Quintanilla) but the DEA was not interested, unless if Complainant also agreed to

cooperated with agency (DEA)& to begin working with(Agent Tapia, Larry Leon & Francis Seib)
12). Complainant was arrested and released that same day after giving a signed statement to the DEA, and took an oath not to disclose to anybody what I was doing for the DEA(Exhibit #1 Governments). Complaiant was also advised that they wanted Guadalupe Garza with as much marijuana as possible, not matter what the cost, It is certainly noteworthy that the DEA did not report the above-described incident or arrest to the Missouri or Texas authorities where the Plaintiff was already under Bond and parole Restrictions, respectively. Had Complainant been a person who was operating solely on his own behalf, as later reported by agents, then the said DEA Agents (Tapia , Leon, and Seib) would have arrested Complainant and notified the State of Missouri and Texas for violations of parole and bond in November of 1993; Instead of acting, the Agents kept the above-described incident and arrest a secret.
13). For several weeks thereafter, while continuing his work for the United States Government, Complainant received calls and personal instructions from DEA Agent Tapia asking for information on drug dealers and about making cases. At this time, Agent Tapia advised Complainant that the U.S. Attorney needed some cases or else they were going to pull the plug on the operation, of which Complainant was a key

part as an informant.

14). Around this time, agents Tapia and Leon sent Complainant into Mexico, at the Eagle Pass, Texas, border crossing, as an agent of the government or the United States. Several Meetings later and a couple of weeks of stressful meetings with DEA Agents, a break was made in January 1994. The Complainant finally got a drug deal in San Antonio, TX. Complainant participated with State and Federal Law Enforcement Agencies from Eagle Pass, TX and San Antonio, TX, in the seizure of 10 ounces of cocaine and one automobile. The Complainant was given a thank you and to resume working as an informant.

15). On or about the beginning of 1994, the Complainant found and supplied information to the DEA on County Investigator Domingo Moncada regarding weapons and marijuana dealings in Crystal City, and Eagle Pass, Texas. The information was good! The County Investigator (Moncada) was arrested by the DEA and other law enforcement agencies in Crystal City, Texas,based in part on the information of the Complainant. In addition, tho this Moncada was found to have heroin in his home and was video taped delivering a cocaine or heroin deal and was arrested.

16). The Complainant was advised to keep trying to make a case against Guadalupe Garza and/or retrieve more information on drug loads. From January 1994 thru January 25, 1995. Again, the

Complainant was successful on retreiving information on several occasions and incriminating other individuals in marijuana drug smuggling into the United States. At times, Complainant Was not at the crime scenes but still reported hearsay and signed statement on several occasions for DEA Agents for probable cause..

17). On July 1994, the Complainant also participated in driving a marijuana load from Eagle Pass, Texas, to Pearsal, Texas with the assistance of State and Federal Law Enforcement agencies from (Eagle Pass, TX)(Pearsal, TX)and (San Antonio, TX) where more than 150-kilos of marijuana were seized. The Complainant was given a thank you and a two-thousand(2,000.00) dollar pay-check from the Drug Enforcement Administration in Eagle Pass, Texas. (Special Agent Larry Leon).

18). On August of 1994, the Complainant asked the DEA Agent Larry Leon and Francis E. Seib for a letter of recommendation for his work as an informant to present to the 290th District court (Judge Sharron MaCrae) in San Antonio, Texas, where the Complainant was placed on probation for 10 years for theft in Bexar County. The letter was not even considered by the Judge Sharron MaCrae, the advice from the Complainant's Attorney (Carlos Martinez) at that point in time, was that the DEA had not helped in anyway, as far as his work, as an informant was concerned.

19). Interestingly, the above-named DEA Agents did not ask the State of Texas, the 290th District Court and the Probation Office (Jan Taylor) for permission or authorization to use the Complainant as an informant during his time on bond for theft, and bond from Zapata, Texas, and/or his placement of probation. These Agents and U.S. Attorney's were all informed as to the criminal history and background of Complainant and generally chose to take no actions in this regard.
20). On January 25, 1995 the Complainant, per his role as an informant, participated in another marijuana load,in which Complainant called DEA Agent Francis E. Seib and Agent Moses Pena in Eagle Pass, Texas, and advised them that Guadalupe Garza was in town with another load. The Complainant related the information on where and when the transaction was to occur. Although the DEA missed the load but managed to arrest Guadalupe Garza on illegal entry into the U.S..
21).On January 25, the Complainant was advised to report to Eagle Pass, TX to give a statement on the overall undercover operation since March or April of 1993 thru January 25, 1995. The Complainant and the controlling Agent Larry Leon and another Federal Law Enforcement Officer (as a witness) signed and dated the statement.
22). After, all of Complainant's help and cooperation with County, State, and federal authorities as an informant, on July 1995, the

Complainant was arrested in North Dakota, with an indictment form Del Rio, TX, charging the Plaintiff with Count: (1) Possession with intent to Distribute Marijuana. Count (2) Conspiracy Possession with intent to Distribute a quantity of Marijuana with Guadalupe Garza, Patricia Rodriguez, Miguel Reynaga, Rodolfo Rodriguez and others between 1993 and January 1995.
23). The Complainant attended a Detention Hearing in Fargo, North Dakota where the Honorable U.S. Magistrate Judge (Karen Klein) presided, the Complainant fought extradition to Texas and won on the grounds of conflicting testimony of the DEA Agent Moses Pena.
24).The Complainant was released to the Halfway House in Fargo, North Dakota where he resided until he was scheduled to appear in U.S. Court in Del Rio, Texas.
25). On December of 1995, the Complainant Pleaded guilty to that Conspiracy Possession with intent to Distribute a quantity of Marijuana, and was sentenced to 84 months in prison, based upon the advice of his counsel.

REASONS FOR GRANTING THE WRIT
MEMORANDUM OF LAW IN SUPPORT
OF CONSTITUTIONAL VIOLATIONS
PRESENTED FOR REVIEW
THE RULE OF LAW

In 1965, The U.S. Court of Appeals for the Fifth Circuit Created, Adopted, Accepted & established the "Sears Rule" in Sears vs. U.S. 343 F.2d 139, 142 (5th Cir. 1965), Which clearly states: There can be no indictable conspiracy with a government informant who secretly intends to frustrate the conspiracy.

The Plaintiff, as the evidence will show, was a (CI) for the County of Zapata, TX.; State of TX DPS, Del Rio, TX.; and D.E.A. in Eagle Pass, TX. And consequently, was portrayed as a drug dealer & co-conspirator by the Gov. & not a confidential informant & subsequently, convicted of conspiracy to distribute marijuana in violation of established law. Consequently, the U.S. District Courts in Laredo, TX, Del Rio, TX, San Antonio, TX and Fifth Circuit in New Orleans, LA. Do Not want to uphold the law which they created & established in 1965.

For these reasons, Plaintiff has sought reversal of conviction for the past 15 yrs in those jurisdictions and consequently has failed because of the conspiracy of Judicial & Official misconduct to conceal evidence & complexity of issues in this case

RULE OF LAW

The U.S. Codes of Conduct for U.S. "JUDGES", 28 U.S.C. Section 455(b)(1) disqualification of justice, judge, or magistrate: which provides that he/she shall also disqualify himself in the following circumstances where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding. Interm of personal knowledge of dis -puted facts concerning the proceeding, however, Jose Melendrez outlines that he had plead guilty before Judge Biery whereas the evidentiary facts concerning the criminal proceeding are related to the facts in question with respect to all of Plaintiff's Petitions, Complaint's, & lawsuits filed during these past 15 yrs. In avoiding redundance, that the facts extracted from the sentencing proceedings are paralleled to the plea proceedings because Judge Biery was the presiding Judge over all of the aforementioned proceedings. In addition, the Plaintiff implicated Judge Biery and Judge Ludlum as being some of the officials whom conspired to convict & send the Petitioner to prison in violation of established 5th Circuit law. In addition, three of the named Defendants in this

instant lawsuit are all part of the Judicial Council of the Fifth Circuit, therefore there can be no justice in TX or the Fifth Circuit where all of the Judges involved do not want to uphold the law as Plaintiff's evidence shows. For these reasons, this case must be heard in the Seventh Circuit.

RULE OF LAW

ETHICS ESSENTIALS A Primer for New Judges on Conflicts, Outside Activities, and Other Potential Pitfalls. The Plaintiff recommends this Hon. Court to See & Read the Plaintiff's instant lawsuit pages 15 thru 30 to establish for the record the violations of law & ethics essentials. These several Constitutional violations of law described by Plaintiff & Supported w/evidence & Affidavit cements the Plaintiff's Allegations & claims against all of the mentioned Defendant "Judges", to include U.S. Judge Rudolph T. Randa from Milwaukee, WI. In addition, with respect to The Rules for Judicial Conduct & Judicial-Disability Proceedings: RULE 26- authorizes cases to be transferred where the serious complaint offers multiple disqualifications among the original council, where the issues are highly visible & local disposition may weaken public confidence in the process.

Furthermore, RULE 26 also offers transfers where the underlying facts in Plaintiff's Complaint of Misconduct "calls into question" policies or governance of home Court of Appeals Sears Rule - Sears vs. U.S., 343 F.2d,139,142, (5th Circuit 1965).

Consequently, Defendant Chief Judge Edith H. Jones of the Fifth Circuit Denied Plaintiff's Request for Transfer as the evidence shows.

RULE OF LAW

ABSOLUTE JUDICIAL IMMUNITY, is a legal doctrine establishing that a judge is not liable for monetary damages for acts performed in the exercise of his or her judicial functions. Stump v. Sparkman, 435 U.S. 349 (1978). Judicial Immunity is wider than prosecutorial immunity: a judge is absolutely immune from civil suit so long as he has jurisdiction over the subject matter before him. That jurisdiction was found in Stump.[1] To determine whether an act is judicial in nature so that immunity would apply, a court looks to "the nature of the act itself, i. e., whether they dealt with the judge in his judicial capacity. Stump, 435 U.S. at 362. There are two circumstances in which absolute immunity does not apply. First, a judge may not rely on immunity when he/she performs an act that is not

"judicial" in nature. Sparkman, 435 U.S. at 360. For example, when a judge used physical force to evict a person from the courtroom, the Ninth Circuit held that the judge performed a non judicial act not covered by absolute immunity. Gregory v. Thompson, 500F.2d 59, 63 (9th cir. 1974).

Second, absolute immunity does not apply when a judge acts "in the clear absence of all jurisdiction." Stump v. Sparkman, 435 U.S. at 356 (internal citations omitted). When immunity is at issue, the scope of a judge's jurisdiction must be con-strued broadly...A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority." Id.

ARGUMENT

With respect to Absolute Judicial Immunity, it is very clear in this case to establish the burden of proof is on Plaintiff to establish that the Defendants' (Judges) and U.S. Prosecution lacked complete jurisdiction to entertain or charge the Plaintiff Jose Melendrez, Jr.,(A CONFIDENTIAL INFORMANT - for the COUNTY, STATE, and FEDERAL GOVERNMENT) with Conspiracy to Distribute Marijuana with Guadalupe Garza

and others whom were the target of the initial investigation in Plaintiff's Criminal Case when established law in Sears vs. U.S., 343 F.2d 139, 142(5th Circuit 1965), did not allow it! In addition, the U.S. Prosecution concealed critical evidence & incidents at the time of the Plaintiffs' Defense Teams Defense Strategy in 1995 & 1996.

The Plaintiff states the following: the LAW was established in Sears vs. U.S., 343 F.2d 139, 142(5th Cir.1965) MORE than a quarter of a Century Ago, that there can be no indictable conspiracy with a government informant who secretly frustrates the conspiracy. Therefore, the LAW was FORSEEABLE, therefore it was not the action of SOLE ERROR, Maliciously Done, or in excess of his authority. But rather, was done by deception, intentional, deliberately, deceitfully and actions of "FRAUD". Fraudulent Charges of Conspiracy that could not stand in Court against the Plaintiff/Appellant Jose Melendrez, Jr., when established law did not allow it. Furthermore, the exculpatory evidence submitted reveals and shows that Plaintiff was working as a (CI) for the County/ State/ & Federal Government ILLEGALLY

from March of 1993 to January 1995 to ILLEGALLY RETRIEVE INFORMATION in an out of the Republic of Mexico and the United States when the Plaintiff/Appellant was on Parole from Boonville Missouri, Bond from ZAPATA County, and BOND from the 290th District Court in San Antonio, TX., (Judge Sharron MaCrae), and Probation (10 yrs) from the 290th District Court in San Antonio, TX.(Judge Sharron MaCrae) In contravention to the Governments fraudulent theory. Because the Defendants' and the U.S. Prosecution NEVER had PERMISSION or AUTHORITY to "USE" Jose Melendrez, Jr., as a Confidential Informant as the Evidence Shows.

In addition, it is very clear that the 290th District State Court in San Antonio, TX by and thru Judge Sharron MaCrae "HAD" COMPLETE JURISDICTION of Plaintiff Jose Melendrez, Jr., when Plaintiff was released on BOND in Dec. of 1992 after being released from Missouri Correctional Facility in Boonville to answer to a Detainer (Theft Case) in San Antonio, TX., as the evidence shows. Consequently, the County, State & Federal Gov. authorities "INSTEAD" of

Reporting the unlawful actions being com - mitted by the Plaintiff Jose Melendrez, Jr., to the 290th District Court by and thru Judge Sharron Macrae after being on BOND & PROBATION in Dec of 1992 and Aug of 1994 and CLEARLY had COMPLETE JURISDICTION over Plaintiff, the above-mentioned authorities"DECIDED" to "CONCEAL" the Plaintiff's "STATUS" as a confidential informant and continued to work the Plaintiff 'ILLEGALLY" as a (CI) IN & OUT of the Republic of Mexico and the U.S. as the evidence shows to further Defendants' Unlawful Schemes & Plans to Subvert the laws to illegitimate ends..

Therefore, the U.S. Prosecution Defendant (Aulia Moses Ludlum) now a U.S. District Judge in Del Rio, TEXAS., whom prosecuted the Plaintiff/Appellant, and Defendant/Appellee Samuel Fred Biery the Original Sentencing Judge in Plaintiff/ Appellant's Criminal Case CLEARLY LACKED COMPLETE JURISDICTION to ENTERTAIN and/or INDICT on the Charge of CONSPIRACY against Plaintiff Jose Melendrez, Jr., when established law did not allow it, and clearly the

fraudulent and illegal manufactured case presented by the Government and Defendant's (JUDGES) against Plaintiff CANNOT STAND in any Court of the U.S. absent the County/State /& Federal Gov. this very serious case does not exist.

Since then, Defendants' (Judges) have obstructed justice, committed perjury and committed fraud to CONCEAL the COMPLEXITY of their unlawful actions and unlawful schemes thru out this past 15 years.

Therefore, the SHIELD OF ABSOLUTE JUDICIAL IMMUNITY under Stump vs. Sparkman WOULD NOT SHIELD the U.S. Prosecution or the U.S. Court (Judges) Defendants from liability, and are liable for monetary damages Under Stump vs. Sparkman, 435 U.S. 356.

For these reasons ,there can be NO JUSTICE in the Fifth Circuit or the U.S. District Courts in Texas because all the Judges do not want to uphold ESTABLISHED LAW. (SEARS RULE). Furthermore, Defendant/ Appeellee's have continued their unlawful actions and unlawful behavior in March 2, 2010, when filing and docketing a civil case without a filing fee being paid to Transfer Venue to Texas as the evidence shows.

Therefore, the Plaintiff states & shows the following issues and incidents to the U.S. Supreme Court for their REVIEW:

RULE OF LAW

28 U.S.C. & 1292(b) Interlocutory Decision and/or Orders, when a district judge in making in a civil action an order not otherwise appealableunder this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: provided, however, that application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order. In addition, in Cohen v. Beneficial Indus. Loan Corp.337 U.S. 541, 545 (1949), this particular case stated and "QUOTED": Appealability at the threshold, we are

met with the question whether the District Court's order refusing to apply the statute was an appealable one. Title 28 U.S.C. & 1291, provides, as did its predecessors, for appeal only from final decisions of the district courts." except when direct appeal to this Court is provided. Section 1292 allows appeals also from certain interlocutory orders, decrees and judgments, not material to this case except as they indicate the purpose to allow appeals from orders other than final judgments when they have irreparable effect on the rights of the parties. It is obvious that, if Congress had allow ed appeals only from those final judgments which terminate an action ,this order would not be appeal able.

ARGUMENT

With respect to Defendant's and their attorney's of record, it is obvious the RULE of LAW under 28 U.S.C. & 1292(b) allows and grants JURISDICTION to the Seventh Circuit Court of Appeals to Review Decisions and Orders especially when Civil Rights, Established laws, & Constitutional Amendments have been extremely violated by Defendant's and their Attorney's of Record and have had an IRREPARABLE EFFECT on the Plaintiff's Constitutional Rights.

In addition, the Defendants Jurisdictional Memorandum filed on July 19, 2010, and the case law mentioned therein, although, filed in good faith, those cases offered different scenarios to find their conclusions. In Plaintiff Case those particular elements & factors are more severe & consequently, very Detrimental to Defendants and their Attorney. Their actions on 04/21/10 "Raise one question": (1) How did the U.S. Court in the Eastern District of WI, Milwaukee Division by Judge Randa arrive at its Decision & Order to Transfer Venue to Texas.

The answer is clear & its under the Declaration of Mr. Matthew V. Richmond AUSA by and thru the U. S. Attorney's Office for the Eastern District of WI, Milwaukee, WI, these determining factors and elements used by Judge Randa were fraudulently presented by Defendant's Attorney on April 21, 2010, when Declaring Under Oath that Plaintiff had a similar filed case in TX. When that is not the TRUTH, as evidence shows.

Therefore, the Plaintiff shows the irreparable effect of the Plaintiffs Constitutional Rights which were extremely violated by Defendants & Mr. Richmond on 04/21/10 & shows the following to the U.S. Supreme Court for review:

First, the question is not whether this Hon. Court of the Seventh Circuit has Jurisdiction to hear this appeal pursuant to 28 U.S.C & 1291 and 1292 (b) Interlocutory Decision and/or Order, but rather, the question is presented to Defendant's Attorney's on how the U.S. Court in Eastern District of WI Milwaukee Division by Judge Randa arrived at its (1)Decision and Order to Transfer Venue to TX. It's clear to establish and determine the factors and elements used by Judge Randa To Transfer Venue to TX, and those Factors & elements were fraudulently presented by Defendant's Attorney's on April 21, 2010, when Declaring Under Oath that Plaintiff had a similar filed case in TX. When that is not the TRUTH.

FIRST ISSUE

The Defendant's Attorney's Mr. Matthew V. Richmond by the U.S. Attorney's Office in the Eastern District of WI is Representing the Defendant's as a Veteran of 21 years as an (AUSA) & clearly states it for the "Record", "Notice of Appearance ",and "Declaration of Matthew V. Richmond" dated on his Response on April 21, 2010, But most importantly, Mr. Matthew V. Richmond declared pursuant to 28 U.S.C. &

1746 that the following is true and correct: Motions and Declarations that were filed By Mr. Matthew V. Richmond on behalf of Defendants.

ARGUMENT

Consequently, the Defendant's & Attorney's were caught committing fraud, obstruction of justice & perjury when Jose Melendrez, Jr., with the "HELP" and Investigations of Deputy U.S. Marshall Christina Haven 920-884-8256, and the Federal Public Defenders Office Krista Valdez 920-430-9900 in Green Bay, WI, DISCOVERED that the Pending case #2010-CV-00018 was filed by Defendant Ludlum and the U.S. District Clerk's Office and not filed by the Plaintiff. The pending case in TX clearly is notarized as Administrative Lawsuit/Complaint. In addition, the Plaintiff respectfully request that (AUSA) Mr. Richmond be disqualified and recused from this case pending a criminal investigation with respect to Fraud, Obstruction of Justice, & Perjury because the Defendant's entire Defense is based on Deception to conceal the complexity of the issues & evidence in this case and especially to Transfer Venue to TX. It should be noted Mr. Richmond has 21 yrs of experience and should have investigated the

case before issuing False Declarations based on his 21 yrs of experience. "IF" Mr. Richmond knew Defendant's filed the pending case in TX, then Mr. Richmond should be prosecuted because the Motions & Declarations were made under penalty of perjury. To wit, the Defendant's & Attorney Failed to address the Sears Rule (Citing Sears vs. U.S. 343 F.2d 139, 142 (5th Circuit 1965).

Therefore, the Defendant's and Attorney's of Record Motion to Transfer Venue to TX should be Deemed Invalid and Deemed Moot in light of the Defendant's and Attorney's of Record 'Unlawful and illegal violations of established Laws".

SECOND ISSUE

Defendant's Attorney Mr. Richmond by the U.S. Attorney's Office in the Eastern District of WI should be investigated in light of the unacceptable conduct committed by this Office. In addition, because the Defendant's Attorney of Record FILED Fraudulent Motions and Declarations to Further Defendants Unlawful Actions & Schemes to conceal the complexity of the issues and to Transfer Venue to Texas in this case, It caused the following:

ARGUMENT

(1) Refusal of Magistrate Judge Patricia J.

Gorence in which the Defendant's Refused to have Judge Gorence entertain Plaintiff's Case.

(2) RECUSAL of Judge J.P. Stadtmueller

(3) Fraudulent "Decisions" and "Orders" by the U.S. (Judge) in the Eastern District of WI.

(4) "Ordered" the U.S. District Clerk in Eastern District of WI to Transfer case to TX on the basis of Deception, Perjury & Obstruction of justice.

(5)Filed & Docketed a case with no Payment of Fee or Application to Proceed In Forma Pauperis in Western District of TX(Del Rio).

(6)Transferred a Case to the Jurisdiction Where Defendant Aulia Moses Ludlum is & was The Former Prosecutor in Plaintiff's criminal Case and now is the U.S. District Judge. Consequently, in violation of established law 28 U.S.C. & 455 and the Code of Conduct Canon 3C(1)(a)to(e)(disqualification & recusal)most importantly, these jurisdictions do not want to uphold established Fifth Circuit Law "Sears Rule".

(7)Several Motions filed by the Plaintiff were not entertained by the U.S. Clerks Office because of Orders issued by Judge Randa.

(8)The U.S. Court by Judge Randa Ordered the case be "Transferred to the Western District of

Texas" And DENIED the Plaintiff the Following Motions: (a) Motion to Stay the Proceedings pending appeal
(b) Motion to speak to Chief Judge Frank H. Easterbrook
(c)Motion to Speak to Chief Judge Clevert.
(d) And basically DENIED the Plaintiff the RIGHT to present his civil lawsuit on the BASIS of DECEPTION and FRAUD & PERJURY to Transfer Venue to Texas.
(9) The Defendant's Attorney had Sufficient time to file for Extension of Time & also filed a Declaration of Matthew V. Richmond, You would think that after 21 years of service as AUSA you would have time to file a Response that was Ordered by the Seventh Circuit Court of Appeals. In addition, The Defendant's & Attorney's of Record cannot change their positions and Declarations because the U.S.Court already made a "Decision" & "Order" based on Defendant's Response to Plaintiff instant civil lawsuit.

Therefore, Defendant's Response should be a Mirror-image of what Defendant's filed on 04/21/10 What is so hard about "that"! Considering Mr. Richmonds' 21yrs of experience. (10) Considering the Courts Order to Transfer Venue to TX and Denying Plaintiff Motion Stay the Proceedings pending Appeal. Defendants & Attorney's Request for Extension

of time would be in contravention to the Judges Order to Deny Plaintiff's Motion to Stay Proceedings, therefore, the Defendant's Motion for extension of TIME should have been DENIED. For these reasons Plaintiff filed an Appeal .

It should be noted, the Defendant's clearly were fishing for Judges to help and support the Defendants by Transferring Plaintiffs Case to TX to Dismiss it as soon as Defendant's received it in TX, and by Denying Plaintiff Due Process of the Law's. To wit, once in TX, the Plaintiff evidence, case and issues would be deemed moot as if never existed, Considering what has happened the last 15 yrs as the evidence shows. For the above-stated reasons the Defendant Motion for extension of time should have been Denied. Permitting the Defendants and Attorney's to continue to evade the inevitable would create the potential for Defendants & Attorney's to "Manufacture more unlawful schemes /plans" like the one before us NOW. In light of the fact, that Defendant's are still employed by the Gov. in their Official Capacities and can Order what they want. The most recent actions under taken on 04/21/10 by Defendant's & Attorneys is more than Enough evidence to Support Plaintiff's Claims

& Allegations that there Continues to be a Conspiracy between the U.S. Attorney's Office & the Defendants to conceal the complexity of the issues & this has been the case this past 15 years.

Enough is Enough, the U.S. Supreme Court has the authority and right to bring an end to this unlawful conduct, manipulation of the Judicial System, and bring an end to this injustice. For these reasons, the Plaintiff is authorizing the U.S. Supreme Court to Acquire Plaintiffs "Evidence" and initiate appropriate action against "ALL" of the Defendant's to include the U.S. Attorney's Office in San Antonio, TX, Del Rio, TX, and Milwaukee, WI.

CONCLUSION

WHEREFORE PREMESIS CONSIDERED, After 15 years, The Petitioner "REQUESTS" the U.S. Supreme Court to REVERSE the U.S. Court of Appeals and U.S. District Court's ORDER to Transfer Venue to Texas and Permit the Petitioner to present his civil case in an Orderly Fashion in the Eastern District of WI.

Respectfully Submitted,

Jose Melendrez Jr Pro se 1/6/2010

Jose Melendrez Jr Pro se
1416 Franklin St.
Little Chute, WI 54140
920-428-1823

CERTIFICATE OF SERVICE

I certify, under penalty of perjury, that I have today placed a copy of the attached document (s) "Petitioner's Petition for the Writ of Certiorari " in an envelope and deposited the same, with first-class postage affixed thereto, into the mailbox provided for the mailing of legal and special mail. The envelope is addressed to the following person(s) at the address(s) following their name(s) below: Dated: Aug 16, 2010

Signature: Jose Melendrez Jr

Print Name Jose Melendrez Jr

Jose Melendrez Jr
1416 Franklin St.
Little Chute, WI 54140
920-428-1823

Dated: August 16, 2010

Cc. Matthew V. Richmond(AUSA)
Solicitor General of the U.S.
Room 5614
Department of Justice
950 Pennsylvania Ave. N.W.
Washington, DC 20530-0001

CC: Hon. Aulia Moses Ludlum U.S. District Judge (Western District of Texas-Del Rio)

Hon. Orlando L. Garcia U.S. District Judge(Western District of Texas-San Antonio)

Hon. Samual F. Biery U.S. District Judge (Western District of Texas-San Antonio)

Hon. Edith H. Jones Chief Judge U.S Court of Appeals(5th Circuit New Orleans LA)

Hon. Carolyn Dineen King U.S. Circuit Judge (5th Circuit-New Orleans, LA)

CERTIFICATE OF SERVICE
CONTINUED

The Office of General Counsel Administrative Office of the United States Courts Washington, D.C. 20544, Phone: (202) 502-1100

Mr. Matthew V. Richmond(AUSA), 517 E. Wisconsin Ave. Room 530, Milwaukee, WI 53202.

Hon. Aulia Moses Ludlum U.S. District Judge(Western District of Texas-Del Rio Division) at 111 E. Broadway, Del Rio, Texas 78840

Hon. Samuel F. Biery U.S. District Judge(Western District of Texas-San Antonio Division) at 655 E. Durango Blvd., San Antonio, Texas 78206

Hon. Orlando L. Garcia U.S. District Judge(Western District of Texas-San Antonio Division) at 655 E. Durango Blvd., San Antonio, Texas 78206

Hon. Edith H. Jones Chief Judge U.S. Court of Appeals(5th Circuit) at 515 Rusk Avenue, Room 12505, Houston, Texas 77002-2655

Hon. Carolyn Dineen King U.S. Circuit Judge(5th Circuit) at 515 Rusk Avenue, Room 11020, Houston, Texas 77002-2694

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JOSE MELENDREZ, JR.,

Plaintiff,

v. Case No. 10-C-271

HONORABLE SAMUEL FRED BIERY,
HONORABLE AULIA MOSES LUDLUM,
HONORABLE ORLANDO L. GARCIA,
HONORABLE EDITH H. JONES,
AND HONORABLE DINEEN KING,

Defendants.

DECISION AND ORDER

Pro se Plaintiff Jose Melendrez, Jr., (Melendrez) filed the instant action against five federal judges. Melendrez cites 28 U.S.C. & 2401, the Federal Tort Claims Act, and 28 U.S.C. & 2680(h) as the basis fr the Court's subject matter jurisdiction over this matter. Melendrez's claims arise out of his alleged service as an informant for the State of Texas and the United States Drug Enforcement Administration, his federal conviction

for conspiring to distribute marijuana, and subsequent actions and complaints brought by Melendrez.

The Defendants Samuel Fred Biery ("Biery"), Aulia Moses Ludlum("Ludlum"), Orlando L. Garcia ("Garcia"), Edith Jones ("Jones"), and Dineen King ("King"),(Colectively the "Defendants") filed a Civil Local Rule 7(h) expedited non-disparities motion for transfer of this action pursuant to 28 U.S.C. & 1404(a). the Defendants seek a transfer of this action to the Western District of Texas. An almost identical action that Melendrez previously filed against these Defendants is pending in that District. Also requested is a stay of these proceedings until after a ruling on the motion to transfer, and a ruling that the Defendants are not required to respond to Melendrez's Motions until they have been properly served with the Complaint and had the requisite "within 60 days" to answer.

Melendrez opposes a transfer of the action. However, he agrees that he has two cases involving precisely the same issues simultaneously pending in two different district courts.

Section 1404(a) of Title 28 of the United

States code States: "For the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civi action to any other district or division where it might habe been brought.' Coffey v. Van Dorn Iron Works, 796 f.2d 217, 219 (7th Cir. 1986). Transferring a case under 28 U.S.C.& 1404(a) is appropriate when (1) venue is proper in the transferor district and (2) the transferee district is one in which the action may have been brought. Id.

In a motion to transfer venue, the moving party bears the burden of establishing that the transferee forum is "clearly more convenient." Id. At 219-20. When deciding whether the moving party has made the necessary showing for a transfer, a court may rely on the allegations of the complaint and may receive and weigh affidavits submitted by the parties. Heller Fin. Inc. v. Midwhey Powder Co., Inc., 883 F.2d 1286, 1293-94(7th Cir.1989).

Section 1391(e), applicable to actions against officers or employees of the United States, provides that venue is proper in any judicial district where a defendant in the actions resides; where a substantial part of the events or omissions giving

rise to the claim occurred; or, where the Plaintiff resides, if no real property is involved in the action. See 28 U.S.C. & 1391(e). Correctly, the parties do not dispute that the action could have been brought in both districts.

Melendrez, who provides a Little Chute, Wisconsin address, apparently is resident of this District. See 18 U.S.C. & 1391(e)(3). Three Defendants, Biery, Ludlum, and Garcia are district court judges in the Western District of Texas. (Richmond Decl 6.) the other two Defendants,
Jones, King, are judges of the Court of Appeals for the Fifth Circuit with offices in Houston, Texas (Id). Melendrez's claims arise out of his actions as an informant for the State of Texas and federal authorities in the Western District of Texas and his conviction and resultant 84-month prison sentence for possession of marijuana in the western District of Texas. (Id. At 2-5,7) Thus, the action would have been originally brought in the Western district of Texas where a substantial portion of the events or omissions giving rise to Melendrez's claims occurred. See 18 U.S.C. & 1391(e)(2).

To determine whether transfer is appropriate, the Court considers the convenience of

the parties, the convenience of the witnesses, and the interest of justice in the context of other considerations, such as the situs of material events, case of access to sources of proof, whether consolidation is feasible, and the plaintiff's choice of forum. See Coffey, 796 F.2d at 219 n.3. Melendrez resides in this district and he chose this forum for the action, which to be given preference. However, he also chose the Texas Forum. The five Defendants are residents of Texas. The situs of the material events in Texas. Additionally, most of the non-party witnesses are likely to be found in Texas. Other Sources of proof will also be concentrated in Texas. While this forum may be more convenient for Melendrez, the other factors weigh in favor of the transfer of this action. See id. At 220.

The court must also consider the "Interest of Justice.) Factors traditionally considered in an"interest of Justice" analysis relate to the efficient administration of the court system. Id. At 221. The "interest of justice" is a separate component of a & 1404(a) transfer analysis, and may be determined in a particular case, even if the convenience of the parties and witnesses might call

for a different result." Id. At 220. (Citations Ommitted). Avoidance of duplicative litigation in two different district courts is in the interest of justice. See Id. At 221. Upon consideration of all the relevant factors, the Court concludes that the Defendants have established that this action should be transferred to the Western District of Texas and their motion to transfer is granted. As a result, this Court will not address the additional issues raised by the Defendants motion.

NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT:

The Defendants Motion to transfer this action to the Western District of Texas (Docket No. 14) is Granted.

Dated at Milwaukee, Wisconsin this 21st day of May, 2010.

BY THE COURT

S/Rudolph T. Randa

Hon. Rudolph T. Randa

U.S. District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JOSE MELENDREZ, JR.,

Plaintiff,

v. Case No: 10-C-271

Honorable Samuel Fred Biery,
Honorable Aulia Moses Ludlum,
Honorable Orlando L. Garcia,
Honorable Edith H. Jones,
And Honorable Dineen King,
Defendants.

DECISION AND ORDER

On May 21, 2010, this Court entered an Order Granding the Defendants' Civil Local Rule 7(h) expedited non-disparities motion for transfer of this action pursuant to 28 U.S.C. & 1404(a). The action, filed by pro se Plaintiff, Jose Melendrez, Jr.,(Melendrez) against the five Defendant federal judges, arise out of his alleged service as an informant for the State of Texas and the United States drug enforcement Administration, his federal conviction for conspiring to distribute marijuana, and subsequent actions and complaints brought by Melendrez. On May 4, 2010, as directed by the Court, the Clerk of court transferred the

action to the Western District of Texas where an almost identical action filed by Melendrez is pending.

On May 28, 2010, Melendrez filed a motion to meet with the chief Judge of this District, Charles N. Clevert, Jr., regarding this action. On June 2, 2010, Melendrez filed an emergency request to meet with the Chief Judge of the Seventh Circuit Court of Appeals, Frank H. Easterbrook regarding this action and his appeal of this action. Melendrez request that the Government be present at both those meetings because Melendrez would like to discuss highly classified information. If Melendrez wants to pursue the meetings, he should write the judges and the United States Attorney and make those requests. This Court will not order that such meetings occur.

Melendrez also has filed a motion to stay the proceedings pursuant to Rule 8(a)(1)(A) of the Federal Rules of Appellate Procedure. The action has been transferred to the Western District of Texas. The matter is no longer pending in this District. The appropriate forum to seek a stay of

the proceedings is the Western District of Texas. Melendrez's Motion for a stay is denied.

NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT:

Melendrez's motion for a meeting with Chief Judge Clevert is DENIED;

Melendrez's request for a meeting with Seventh Circuit Chief Judge Easterbrook is DENIED;

and Melendrez's Motion for a stay of proceedings is DENIED.

Dated at Milwaukee, Wisconsin this 4th day of June, 2010.

BY THE COURT

S/Rudolph T. Randa
Hon. Rudolph T. Randa
U.S. District Judge

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO ILLINOIS 60604

August 6, 2010

Before

Michael S. Kanne, Circuit Judge
Hana Diamond Rovner, Circuit Judge
Diane S. Sykes, Circuit Judge

Jose Melendrez Jr.,		) Appeal from the United
Plaintiff-Appellant,		) States District Court of
		) Wisconsin.
No. 10-2345	v.	)
		)
Honorable Samuel Fred Biery,		) No. 2:10-CV-00271-RTR
et, al.,		)
Defendant-Appellees.		) Rudolph T. Randa, Judge

ORDER

On Consideration of the papers filed in this appeal and review of the short record,

IT IS ORDERED that this appeal is DISMISSED for lack of jurisdiction.

Genearlly, a decision by a district court regarding a motion to transfer venue is a non-reviewable interlocutory order. Hill v. Potter, 352 F.3d 1142, 1144 (7th Cir. 2003). Appellant appeals such an order in this case.